

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-102477-10

Date: JUNE 07, 2010

RE:

Legend

Decedent	=
Son 1	=
Son 2	=
Daughter	=
Grandchild 1	=
Grandchild 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Trust	=
Attorney	=
<u>a</u>	=
<u>b</u>	=

Dear :

This responds to your letter dated December 18, 2009, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to make an allocation of Decedent's generation-skipping transfer (GST) exemption to transfers to Trust.

The facts and representations submitted are summarized as follows:

On Date 1, Decedent established Trust, a revocable living trust. On Date 2, Decedent amended Trust in its entirety.

In relevant part, Trust provides that upon the death of Decedent, the remaining trust estate is to be held in two separate trusts, the GST Exempt Trust and the GST Non-Exempt Trust. The trustee is to divide the GST Exempt Trust into separate shares for each living child of Decedent.

Decedent died on Date 3. Decedent was survived by her three children: Son 1, Son 2, and Daughter. Decedent was also survived by two grandchildren, Grandchild 1 and Grandchild 2, who are the children of Son 1. Pursuant to the terms of Trust, the trustee divided the trust estate into two trusts. The trustee funded the GST Exempt Trust with \$a and funded the GST Non-Exempt Trust with the remainder of the Trust property.

Decedent's son, Son 1, in his capacity as executor of Decedent's estate, hired Attorney to file the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for the estate. Attorney timely filed the Form 706 on Date 4, but failed to file Schedule R.

The trustee has distributed \$b from Son 1's share of the GST Exempt Trust to Grandchildren 1 – 2.

You have requested an extension of time under § 2642(g) and § 301.9100-3 to allocate Decedent's available GST exemption to the GST Exempt Trust, effective as of Date 3. You have also requested a ruling that the distributions already made to Grandchildren will be exempt from GST taxes.

LAW AND ANALYSIS

Section 2601 of the Internal Revenue Service imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable. Section 2631(c) provides that for purposes of § 2631(a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under § 2010(c) for such calendar year.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of

this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. Section 2642(g)(1)(B) further provides that for purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute. See Notice 2001-50, 2001-2 C.B. 189.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, the executor is granted an extension of time of 120 days from the date of this letter to make an allocation of Decedent's available GST exemption to the GST Exempt Trust. The allocation will be effective as of Decedent's date of death and will be based on the fair market value for federal estate tax purposes on the date of death. Further, we conclude that the distributions made to Grandchildren will be exempt from GST taxes.

The executor should make the allocation on a supplemental Form 706. The supplemental Form 706 should be filed on behalf of the estate with the Cincinnati Service Center at the following address: Internal Revenue Service Center, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 706. A copy is enclosed for this purpose.

We further conclude that the distributions already made to Grandchildren from the GST Exempt Trust will also be exempt from GST tax.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel
Passthroughs & Special Industries

By: _____
Lorraine E. Gardner
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes
Copy of this letter